

**STATE BOARD OF OPTOMETRY**

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## **What the resolution of *National Association of Optometrists & Opticians v. Harris* means to you\***

The Board of Optometry has received a number of inquiries regarding the recent conclusion of *National Association of Optometrists and Opticians v. Harris*, which affected the Board's authority to enforce Business and Professions (B & P) Code Section 655, and what it means to some of our licensees.

This litigation upheld the constitutionality of Business and Professions Code Sections 655 and 2556. B & P Code Section 655 prohibits business and financial relationships between optometrists and registered dispensing opticians, and between optometrists and optical companies that manufacture, sell, or distribute lenses, frames, or other such appliances. (**Coming Soon:** To view the full history of the litigation in *Nat'l Ass'n of Optometrists & Opticians v. Harris*, B & P Code Section 655, other pertinent provisions of law, and answers to frequently asked question, please visit the Board's Web site at [www.optometry.ca.gov](http://www.optometry.ca.gov) and look under the "What's New" section. )

Now that the litigation has concluded, the Board's priority is to ensure compliance with the law and to help our licensees find pathways to compliance. Many optical retailers that directly or indirectly employ or contract with optometrists are currently engaged in discussions with representatives of the Attorney General's Office to evaluate the legality of their ongoing operations. Our licensees may wish to contact the commercial or retail entities they have relationships with to inquire as to whether or not they are engaged in such discussions or whether they are making changes to comply with the law. We realize that full compliance will not occur overnight but we hope that our licensees are making a good faith effort to work toward compliance.

As always, the highest priority of the Board is protection of the public. The intent of B & P Code Section 655 is to prevent interference with the optometrist-patient relationship by optical companies and retailers and to ensure that all medical decisions are made by the licensed optometrist. In ensuring compliance, a good first step would be for optometrists to ensure that they are the ones making health care decisions for their patients. There are some actions that constitute the unlicensed practice of optometry if it is determined that the acts are controlled by someone who is unlicensed. These include but are not limited to determining:

- How much time to spend with a patient;
- Which diagnostic tests should be administered to a patient or the need for retinal photographs;
- The need for referrals to, or consultation with, an ophthalmologist or other specialist;
- Whether to prescribe corrective lenses for a patient, and whether a patient needs more than one pair of corrective eyewear; and
- What kinds of products to prescribe for a patient, whether proprietary products of an optical company, stock on hand, or ordering specific products.

Another step optometrists can take is to ensure that they control certain business or management decisions about their practices. These include but are not limited to having control over:

- The hours and days of the week that the optometrist's office will be open to see patients, how many patients will be seen in any given period of time, the number of eye exams to be given per day, week or month, and how many hours an optometrist will work;
- Whether to accept patients on a walk-in basis, without an appointment;
- Whether to dispense prescription eyewear or not;
- The selection, hiring, or firing of optometrists and optometric assistants;
- The selection and approval of optometric equipment and supplies for the optometry practice;

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cont.**

- Whether to enter into contractual relationships with third-party payers;
- How to advertise the professional optometric practice; and
- Ownership and retention of the optometric records of patients.

The Board cannot advise individual optometrists on the propriety or legality of their business relationships. Several optical retailers that directly or indirectly employ or contract with optometrists have been in discussions with the Attorney General's Office to evaluate the legality of their ongoing operations. Optometrists who currently have relationships with commercial or retail entities may wish to contact them to inquire if they are engaged in such discussions. They may also wish to discuss their practices with knowledgeable legal experts.

The Board realizes that *Nat'l Ass'n of Optometrists & Opticians v. Harris* will mean that some of our licensees may have to make difficult choices. We are anxious to help our licensees make the transition, and will be posting additional information as necessary on our Web site as issues arise.

*\* This information was approved by the California State Board of Optometry on September 13, 2013*